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<u>Brief No.</u>	<u>Title</u>
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2	Motion for Leave to File Brief as an Amicus Curiae (by American Society of Composers, Authors and Publishers)
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SUPREME COURT, U. S.

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HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1955

No. 529.

MARIE DE SYLVA,

Petitioner,

—against—

MARIE BALLENTINE, as Guardian of the Estate of
Stephen William Ballentine,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF AS AN
AMICUS CURIAE:**

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**MOTION OF MUSIC PUBLISHERS' PROTECTIVE
ASSOCIATION, INC. FOR LEAVE TO FILE
A BRIEF AS AN AMICUS CURIAE**

The Music Publishers' Protective Association, Inc. respectfully applies to this Court for leave to file a brief as an *amicus curiae* in the above entitled proceeding, pursuant to Rule 42 (3) of the rules of this Court, on the following grounds:

1. Music Publishers' Protective Association, Inc. is a non-profit membership corporation organized and existing under the laws of the State of New York. It is a trade association of the popular music publishing industry. Its membership consists of forty five active music publishers, which include many of the foremost American publishers of popular music.

2. The interest of Music Publishers' Protective Association, Inc. in this matter arises out of the fact that this case involves the judicial interpretation and construction of a portion of Section 24 of the United States Copyright Law, Title 17, U. S. Code, said section being the section which sets forth the persons who are authorized to secure renewals of United States copyrights and the manner in which such renewals are obtained. The particular portion of the section involved provides:

"* * * That in the case of any other copyrighted work,
* * * the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright * * *"

The question is whether, where an author is dead, this Section is to be interpreted as granting to his widow, the sole right to obtain and dispose of a renewal copyright, or whether, during the widow's lifetime, his children are in the same class with her for that purpose.

Since the members of Music Publishers' Protective Association, Inc. depend almost entirely upon the acquisition of copyrights, renewals of copyright and various exclusive rights thereunder, the vast majority of them have a vital interest in the judicial interpretation and construction of this section of the Statute.

3. The decision of the Court in the case at bar is in conflict with the decision of the Circuit Court of Appeals, Second Circuit in the case of *Silverman v. Sunrise Pictures Corporation*, 273 Fed. Rep. 909. In that case the Court held at page 911:

"The purpose of the statutory renewal provisions is to give to the persons enumerated in the order of

their enumeration a new right or estate, not growing legally out of the original copyright property, but a new creation for the benefit (if the author be dead) of those naturally dependent upon or properly expectant of the author's bounty." (Italics supplied).

The "*enumeration*" set forth in Section 24 is "*widow, widower, or children*". Prior to the case at bar, music publishers acting under the Statute as it was construed in the case of *Silverman v. Sunrise Pictures Corporation, supra*, and having in mind the order of *enumeration* set forth in the Statute, concluded that where a deceased author was survived by widow and children, the right of renewal was secured to the widow alone and as a result, in many cases, obtained and have acted under exclusive assignments of renewal copyrights solely from the widow.

In this case, the Court has interpreted the Statute so as to place a widow and children in the same class, and has held in substance that if the widow renews a copyright, such renewal inures to her benefit and the benefit of the children "*as a class*". This holding would appear to grant to a child a right to renew in all respects independent of, equal to and concurrent with that of the widow. In the case of *Silverman v. Sunrise Pictures Corporation, supra* at page 914, the Court acknowledged "the right of each part or common owner to license", and there is authority for the principle that each coowner of a work has an independent right to dispose of the work. (*Edward B. Marks Music Corporation v. Jerry Vogel Music Co., Inc.*, C. C. A. 2nd, 140 Fed. 2nd 266; *Shapiro, Bernstein & Co., Inc. v. Jerry Vogel Music Co., Inc.*, District Court, S. D. N. Y., 73 Fed. Supp. 165.)

Accordingly, it would appear to follow that the child's right to dispose of a copyright—perhaps even one already renewed and assigned by the widow—or to license the exercise of rights thereunder would be independent of, equal to and concurrent with the right of the widow. It is

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difficult to believe that Congress ever intended such a result or the consequences which would necessarily flow from it.

Furthermore, it would cause great confusion and chaos if a child now is held to possess such an independent, equal and concurrent right to dispose of a renewal copyright to an assignee of his own choosing, and it would cast a cloud on the title of the many persons who in good faith already have acquired what was believed to be an assignment of exclusive rights from a widow.

4. The decision in the case at bar, insofar as it grants to a child a right to renew a copyright independent of, equal to and concurrent with that of the widow, appears to be wholly inconsistent with the intent of Congress to create a property right "for the benefit of those naturally dependent upon or properly expectant of the author's bounty".

Because of an infant's inability to enter into a binding contract, the direct result of this interpretation, in many cases, would be to deprive the widow of the power to dispose of the renewal copyright or to grant exclusive licenses under it for the benefit of herself and her children.

The very essence of copyright is *exclusivity*, and the true value of copyright depends upon *exclusivity*. A publisher or a motion picture producer, for instance, would find little value in a work which was not his exclusively to exploit. Under the decision in this case, it would seem that a widow with infant children no longer is able to grant the renewal copyright, or a license under it, exclusively to anyone, because she can give no warranty or other assurance that a child, upon attaining majority thereafter, will not execute an independent assignment

or license to a competing publisher or user of his own selection. Such a suspension or impairment of the power of the widow, during the minority of her children, to make an exclusive grant of the renewal copyright, or rights thereunder, for the joint benefit of all, is contrary to the intent of Congress, because it serves to deprive the widow and her children of the full fruits of "the author's bounty" at a time when ordinarily they would be most needed.

The renewal copyright would become an empty shell if one child in a large family, because of his minority, should be unable to join with the others in making an exclusive grant, or having attained majority, because of improper motive, should assign the renewal copyright to his own assignee.

5. Music Publishers' Protective Association, Inc. believes the issues of fact and questions of law have not been presented by the parties, and will not be presented by the parties, in the light of facts usually and generally involved in connection with copyright renewals. The facts in this case are most unusual and the Statute has been interpreted in an unusual atmosphere involving the inherent disharmony and diversity of interest which must exist between the widow on the one hand and the mother and guardian of the illegitimate child of the deceased author on the other hand.

6. The attorney for petitioner has consented to the filing of a brief *amicus curiae* by Music Publishers' Protective Association Inc. but the attorneys for respondent have withheld their consent.

7. I am authorized by the Board of Directors of Music Publishers' Protective Association, Inc. to make this motion.

WHEREFORE, I respectfully pray that an order be made and entered herewith granting the within motion, and for such other and further relief as this Court may deem just and proper in the premises.

Respectfully submitted,

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